IN THE

Supreme Court of the United States

October Term, 1952

No. [redacted] 94

UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD T. LINDSAY, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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October Term, 1962

No. 582

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Opinions Below and Jurisdiction

The respondents adopt the statements of the petitioner with respect to the opinions below and the jurisdiction of the Court.

Questions Presented

The petition is directed to, and the Courts below considered, only the question whether the suit was barred under Section 4(c) of the Commodity Credit Corporation

Charter Act of 1948, as amended, hereinafter called the Act, because not brought within six years after the right accrued.

If the petition is granted the respondent proposes to raise the additional question whether the judgment is correct, irrespective of the language of said Section 4(c), because the complaint fails to state a claim upon which relief can be granted. This question as well as that to which the petition is directed was raised by the defendants' motions to dismiss (R. 37-39).

Statutes Involved

Section 4 c of the Act, 62 Stat. 1070, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156, 15 U. S. C. sec. 714 b (c) provides in part:

> "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, . . . Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of the subsection (c) of this section to the same extent as though such suit were by or against the Corporation, . . ."

Section 16 of the Act, 62 Stat. 1075, 15 U. S. C. section 714 n, provides:

> "The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation, are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation,

a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

Statement

The claim upon which the suit was brought was one which belonged to Commodity Credit Corporation, a Delaware corporation, and was transferred to the Corporation created by the Act by Section 16. The defendants were Lindsay, an agent of the Delaware corporation described as a Handler under a contract dated July 14, 1944, his sureties, and Draper & Company, Inc. a warehouseman. The damages occurred not later than February 26, 1945. The suit was commenced on February 29, 1952 (R. 1).

The claim against Lindsay was under the contract, and particularly on Lindsay's promise to "provide proper storage, upon the terms and conditions hereinafter specified, for the wool received by the Handler" and to "take such action as may be necessary to keep such wool in good condition" (R. 21-22). The petitioner's statement fails to mention that among the "terms and conditions" thereafter specified was an agreement on the part of the Delaware corporation that, unless it required the Handler to insure the wool, it would "indemnify and save the Handler . . . harmless from any loss or damage to the wool after it is placed in the warehouse . . . provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool" (R. 22). The petitioner's statement also fails to mention that there was no allegation of any requirement that Lindsay insure the wool while in storage, or of any failure on his part to use due care.

The claim against Draper & Company, Inc. was based solely on the fact that the wool involved was delivered to it for storage in good condition and was returned in damaged condition. The petitioner's statement fails to mention that there was no allegation that the warehouseman was negligent.

The defendants' motions to dismiss pointed out the failure to allege negligence on the part of either Lindsay or of Draper & Company, Inc., as well as the fact that "the right of action set forth in the complaint did not accrue within six years next before the commencement of the action."

Reasons for Denying the Writ

1. The decisions below are clearly correct.

Both the District Court and the Court of Appeals concluded that "the right accrued on which suit is brought" when the cause of action came into existence. This, the petition admits (p. 6), was on or about February 26, 1945.

The petition does not contend that the limitations imposed by the Act were wholly prospective and therefore inapplicable to causes of action arising prior to its enactment, but merely that the word "accrued" should not be given its natural and literal meaning. It is admitted that there is no constitutional reason for giving it another meaning, as in cases between private litigants such as *Sohn v. Waterson*, 17 Wall. 596, since Congress might cut off at any time the Government's right to sue. But it is suggested (1) that there might be a constitutional objection to a curtailment of the right to sue the Corporation created by the Act, and (2) that "there is nothing in the Act to justify treating suits by the Corporation differently from those against the Corporation" (Petition, p. 10).

Both these points are without merit. When Congress created the Corporation, it need not have made it liable for any of the debts of the Delaware corporation. Certainly, if it made the new corporation liable for any of the debts of the Delaware corporation, it could limit that liability to claims which had come into existence within some specific period. Congress could have expressly made state statutes of limitations applicable to claims against the corporation, or have provided a uniform period within which to bring suits to enforce such claims. The proviso in Section 16: "That nothing in this Act shall limit or extend any other period of limitation otherwise applicable to such claims against the Corporation", shows clearly that Congress recognized these possibilities. The proviso was, of course, intended to make certain that state statutes of limitations otherwise applicable to the liabilities assumed by the Corporation should not be affected. Whether Congress believed that such a provision was required for constitutional reasons needs no debate. No language, however, could show more clearly that suits by the Corporation were to be treated differently than those against it. The plain inference of the proviso is that suits by the Corporation, or by the United States as the real party in interest, would be barred by the limitations in section 4c, and only by those limitations, whether the effect was to limit or extend periods otherwise applicable.

Field Packing Company v. United States, 197 F. 2nd 329, cited by the petitioner as in conflict with that of the Court of Appeals, is so only on the face of the opinion. The contentions actually made by the defendant in that case were that the causes of action involved were barred by the four-year period of limitations, found in the original Act of 1948, before the amendment of June 7, 1949, extending

the period of limitations to six years, and that Congress could not retroactively remove the bar. It was assumed by counsel for the defendant, without supporting argument in his briefs, that the four-year period began to run when the cause of action came into existence. It is not clear from the *per curiam* opinion in the Field case whether the Court then concluded that the limitations of section 4c of the Act were not applicable to causes of action existing at its passage, or whether it translated the words "after the right accrued", when applied to such causes of action, as meaning "after the passage of the Act."

2. The judgment is correct apart from the issue of limitations.

The complaint clearly fails to state a claim against any of the defendants upon which relief can be granted.

Since the contract with the defendant Lindsay expressly provided that petitioner would indemnify that defendant against any loss or damage to the wool "provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool", an allegation of negligence was essential.

The defendant Draper & Co., Inc., was not, of course, an insurer because the wool was stored in its warehouse. An allegation of its negligence was required to show liability on its part.

The failure of the petitioner to allege negligence on the part of any defendant ought not to be regarded as merely a formal defect, subject to cure by amendment. The damage to the wool must have been discovered by the Delaware corporation on February 26, 1945. The seven years that elapsed before suit was brought were ample time to investigate the circumstances and to determine whether there

was any actual fault on the part of the defendants. The resistance made by the defendants and their sureties to a claim amounting to only $1127.03 over a period of more than seven years, taken in connection with the failure to allege negligence in the complaint, warrants an inference that no such fault has been claimed. Certainly, as a practical matter, if there were evidence of negligence to meet, it would be cheaper for the defendants to pay the claim than to try it. The attorneys for the United States would not have hesitated to allege negligence if they could have conscientiously done so.

3. The issue of limitations ought not to be drawn before the Court in this case.

The proper administration of justice ought not to put the citizen to the choice of resisting a claim made by the Government upon a legal issue deemed important by its agents, or of waiving the defense in order to save expense incommensurate to the amount in controversy. The respondent can recover no costs in the Court of Appeals nor in this Court, though successful in maintaining its contentions. If, as stated in the petition, Commodity Credit Corporation has about 141 claims, totalling $1,250,000., some of them must be cases in which only the question of limitations is involved and large enough to warrant the expense of coming to this Court.

We submit that, even if the Court has doubt as to the propriety of the decision below, it ought not in its discretion to undertake to review a judgment involving so small an amount and so plainly correct on other grounds.

Respectfully submitted,

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